

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 13, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEROME J. C.,

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner
of Social Security Administration,

Defendant.

NO: 1:24-CV-3064-TOR

ORDER AFFIRMING
COMMISSIONER'S DENIAL OF
BENEFITS UNDER TITLES II & XVI
OF THE SOCIAL SECURITY ACT

BEFORE THE COURT is Plaintiff's Motion for judicial review of Defendant's denial of his application for Title II and Title IX under the Social Security Act (ECF No. 7). This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record, the completed briefing, and is fully informed. For the reasons discussed below, the Commissioner's denial of Plaintiff's application for benefits under Title II and Title XVI of the Social Security Act is **AFFIRMED**.

ORDER AFFIRMING COMMISSIONER'S DENIAL OF BENEFITS UNDER TITLES II & XVI OF THE SOCIAL SECURITY ACT~1

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means relevant evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Id.*, at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C.
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
20 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

1 “substantial gainful activity,” the Commissioner must find that the claimant is not
2 disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
14 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.
2 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.
15 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
16 analysis concludes with a finding that the claimant is disabled and is therefore
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R.
3 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 On February 25, 2019, Plaintiff filed an application for Title II disability
6 insurance benefits and Title XVI supplemental security income benefits, alleging
7 an onset date of January 1, 2002.¹ ECF No. 4 at 1733. He later amended the onset
8 date to September 26, 2018. *Id.* at 1734. The applications were denied initially,
9 ECF No. 4 at 178-210, and again on reconsideration. *Id.* at 211-250. Plaintiff
10 appeared at a hearing before an administrative law judge (“ALJ”) on August 20,
11 2020, who issued a decision unfavorable to Plaintiff thereafter. ECF No. 4 at
12 1853-1896, 1802-1825. After the Appeals Council denied review, Plaintiff filed a
13 complaint with this Court and the case was subsequently reversed and remanded
14 pursuant to sentence four of 42 U.S.C. Section 405(g) on April 22, 2022. *Id.* at
15 1832-1833. The Appeals Council vacated the prior ALJ decision and remanded for
16 further proceedings. *Id.* at 1838-1842. Plaintiff filed subsequent Title II and Title
17 XVI benefit claims which were consolidated with claims on remand. *Id.* On
18

19

¹ The ALJ decision has a typo and initially lists the onset date as a January 1, 2022.
20 ECF No. 4 at 1734 has the correct year of 2002.

1 January 3, 2024, Plaintiff again appeared before the ALJ for a telephonic hearing,
2 and the ALJ issued its decision denying Plaintiff's claims February 7, 2024. *Id.* at
3 1733, 1755.

4 The ALJ found Plaintiff meets the insured status requirements of the Social
5 Security Act through December 31, 2018. *Id.* at 1734. At step one of the
6 sequential evaluation, the ALJ found Plaintiff had engaged in substantial gainful
7 activity between June 2021 and December 2021, but did not engage in substantial
8 gainful activity from September 26, 2018 through June 21, 2021 or from December
9 5, 2021 through the date of the ALJ's decision. *Id.* at 1736, 1737. At step two, the
10 ALJ found Plaintiff had the following severe impairments: carpal tunnel syndrome;
11 status post hernia surgery; degenerative joint disease of the left knee; degenerative
12 joint disease of the left wrist status post ORIF surgery; depressive disorder; anxiety
13 disorder; neurocognitive disorder; and substance abuse in remission. *Id.* at 1737.
14 At step three, the ALJ found Plaintiff did not have an impairment or combination
15 of impairments that meets or medically equals the severity of the listed
16 impairments. *Id.* at 1738. The ALJ then found Plaintiff had the RFC to perform
17 light work with the following limitations:

18 can stand up to twenty minutes at a time for total time standing time
19 of one hour in an eight hour workday; can walk up to twenty minutes
20 at a time for total walking of one hour in an eight hour workday; can
sit for up to two hours at a time for total time sitting of six hours in an
eight hour workday; can lift and/or carry twenty pounds occasionally
and ten pounds frequently; can reach overhead occasionally; can reach

1 at or below shoulder level frequently; can handle and finger
2 frequently; can stoop, crouch, and climb ramps and stairs
3 occasionally; cannot crawl, kneel, or climb ropes, ladders, or
4 scaffolds; cannot work at heights or in proximity to hazardous
conditions; can have no contact with the public; is capable of working
in proximity to, but not in coordination with, co-workers; and can
have occasional contact with supervisors.

5 *Id.* 1740-1741.

6 At step four, the ALJ found Plaintiff is unable to perform any past relevant
7 work. *Id.* at 1752. At step five, the ALJ found, based on Plaintiff's age, education,
8 work experience, and RFC, there are other jobs that exist in significant numbers in
9 the national economy that the claimant can perform, such as production assembler,
10 document preparer, and collator operator. *Id.* at 1753-1754. The ALJ concluded
11 Plaintiff was not under disability, as defined in the Social Security Act, from
12 September 26, 2018 through February 7, 2024, the date of the ALJ's decision. *Id.*
13 at 1754.

14 ISSUES

- 15 1. Whether the ALJ properly assessed the unsuccessful work attempts;
- 16 2. Whether the ALJ properly found the RFC consistent with disability;
- 17 3. Whether the ALJ properly assessed Plaintiff's subjective complaints;
- 18 4. Whether the ALJ properly evaluated the medical opinion evidence.

19 ECF No. 7 at 2.

20 //

1 DISCUSSION

2 **A. Step One – Substantial Gainful Activity**

3 Plaintiff contends the ALJ reversibly erred by failing to conclude the work
4 Plaintiff performed from June 22 to December 4, 2021, was an unsuccessful work
5 attempt (“UWA”). Plaintiff argues the ALJ did not properly consider this work
6 being less than six months long and ending due to Plaintiff’s impairment. ECF No.
7 7 at 4.

8 Generally, if a claimant works for substantial earnings as described in the
9 regulations, the work is found to be substantial gainful activity which disqualifies
10 the claimant as disabled. 20 C.F.R. §§ 404.1574(a), 416.974(a). However, where
11 a claimant ceases work at six months or less due to an impairment, it is considered
12 a UWA. 20 C.F.R. §§ 404.1574(c), 416.974(c). The work must end either due to
13 claimant’s impairment or “because of the removal of special conditions that took
14 into account [their] impairment and permitted [them] to work,” and:

- 15 a. There must have been frequent absences due to the impairment; or
16 b. The work must have been unsatisfactory due to the impairment; or
17 c. The work must have been done during a period of temporary
18 remission of the impairment; or
19 d. The work must have been done under special conditions.

1 20 C.F.R. §§ 404.1574(c)(3), 416.974(c)(3); Social Security Ruling (“SSR”) 84-
2 25.

3 The ALJ found Plaintiff to have met the monthly earnings constituting
4 substantial gainful activity. ECF No. 4 at 1737. The ALJ also concluded it
5 appeared Plaintiff performed his work at a satisfactory level and without special
6 accommodations for the stated period. ECF No. 4 at 5. Plaintiff’s then employer
7 completed a survey stating that from June 22, 2021 through December 4, 2021,
8 Plaintiff worked full time without special assistance or under special conditions,
9 regularly reported to work, and satisfactorily completed his work to the same
10 degree as other employees. *Id.* at 2010-2011. Therefore, the ALJ found Plaintiff
11 was not disabled during that time period. *Id.*

12 Plaintiff’s contention that his work ended under six months due to his
13 impairment is not supported by the record. Nor does his explanation that
14 Plaintiff’s friend got him hired, he took frequent breaks *hiding* behind his machine,
15 and he took three sick days within six months qualify as a “special condition”
16 similar to those listed under 20 § 404.1573(c). Therefore, the Court finds the ALJ
17 did not err in concluding Plaintiff’s employment from June 22, 2021 to December
18 4, 2021 qualified as substantial gainful activity.

19 **B. The RFC**

20 Plaintiff next argues that the RFC is consistent with disability. ECF No. 7 at

1 5. Plaintiff asserts that the RFC's limitation of supervisory contact to occasional is
2 inconsistent with the VE's testimony that a training period may require frequent to
3 constant supervisory contact. ECF No. 7 at 5. Plaintiff alleges he will not be able
4 to survive training as a result, leading to a string of short-term jobs which is
5 insufficient to constitute SGA. *Gatliff v. Comm'r of the Social Sec. Admin.*, 172
6 F.3d 690, 694 (9th Cir. 1999). Therefore the RFC is consistent with disability.
7 ECF No. 7 at 6.

8 Defendant counters that the VE did not testify at the hearing that the possible
9 jobs would require constant or frequent supervision during the training period.
10 ECF No. 15 at 18. The Court agrees. The VE's response to Plaintiff's question of
11 how much supervision would occur during a training period was not an
12 unequivocal answer of constant or frequent supervision. The VE stated it would
13 vary employer to employer and supervision may or may not be frequent and "could
14 also be occasional in terms of the actual supervisory time required or attention."
15 ECF No. 4 at 1799-1800. The Court does not find this to be inconsistent with the
16 RFC.

17 **C. The ALJ's Assessment of Plaintiff's Subjective Complaints**

18 Plaintiff argues the ALJ did not provide clear and convincing reasons for
19 discounting Plaintiff's mental and physical subjective testimony. ECF No. 7 at 6.
20

1 An ALJ engages in a two-step analysis to determine whether a claimant's
2 subjective symptom testimony can be reasonably accepted as consistent with the
3 objective medical and other evidence in the claimant's record. Social Security
4 Ruling ("SSR") 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine
5 whether there is 'objective medical evidence of an underlying impairment which
6 could reasonably be expected to produce the pain or other symptoms alleged.'"
7 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting *Vasquez v. Astrue*,
8 572 F.3d 586, 591 (9th Cir. 2009)). "The claimant is not required to show that her
9 impairment 'could reasonably be expected to cause the severity of the symptom
10 she has alleged; she need only show that it could reasonably have caused some
11 degree of the symptom.'" *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v.*
12 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

13 Second, "[i]f the claimant meets the first test and there is no evidence of
14 malingering, the ALJ can only reject the claimant's testimony about the severity of
15 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
16 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
17 omitted). General findings are insufficient; rather, the ALJ must identify what
18 symptom claims are being discounted and what evidence undermines these claims.
19 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
20 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently

1 explain why he or she discounted claimant's symptom claims). "The clear and
2 convincing [evidence] standard is the most demanding required in Social Security
3 cases." *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
4 *Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

5 The ALJ is instructed to "consider all of the evidence in an individual's
6 record," "to determine how symptoms limit ability to perform work-related
7 activities." SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,
8 persistence, and limiting effects of a claimant's symptoms, the following factors
9 should be considered: (1) daily activities; (2) the location, duration, frequency, and
10 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
11 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
12 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
13 other than medication, an individual receives or has received for relief of pain or
14 other symptoms; (6) any measures other than treatment an individual uses or has
15 used to relieve pain or other symptoms; and (7) any other factors concerning an
16 individual's functional limitations and restrictions due to pain or other symptoms.

17 *Id.* at *7–8; 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

18 Here, the ALJ found Plaintiff's impairments could reasonably be expected to
19 cause some of the alleged symptoms. ECF No. 4 at 1742. However, the ALJ also
20 found Plaintiff's statements concerning the intensity, persistence and limiting

1 effects of the symptoms were not entirely consistent with other evidence in the
2 record. *Id.* Plaintiff challenges the ALJ's discounting of Plaintiff's testimony as to
3 his mental and physical symptoms. ECF No. 7 at 6.

4 1. Mental

5 First, Plaintiff argues the ALJ erroneously concluded the objective evidence
6 presented "unremarkable" findings and argues such reasoning is legally
7 unsustainable. ECF No. 7 at 6.

8 Objective medical evidence is a relevant factor, along with the medical
9 source's information about the claimant's pain or other symptoms, in determining
10 the severity of a claimant's symptoms and their disabling effects. 20 C.F.R. §§
11 404.1529(c)(2); 416.929(c)(2). However, an ALJ may not discredit a claimant's
12 symptom testimony and deny benefits solely because the degree of the symptoms
13 alleged is not supported by objective medical evidence. *Id.*

14 The ALJ found the record had inconsistent findings regarding Plaintiff's
15 reported symptoms and presentation during appointments. ECF No. 4 at 1744.
16 The ALJ found evidence showing Plaintiff has "depressive disorder, anxiety
17 disorder, neurocognitive disorder, and a history of drug and alcohol use with
18 reported symptoms of depression, anxiety, suicidal ideations and attempts, low
19 energy, poor motivation, poor memory, and poor concentration." ECF No. 4 at
20 1744. However, the ALJ found the mental status examinations to be often

1 unremarkable, "with treating notes indicating he presents as pleasant, fully
2 orientated, cooperative, and with normal affect, normal mood, normal memory,
3 normal concentration and attention, normal insight and judgment, normal
4 cognition, and logical thought process." *Id.*

5 The ALJ found Plaintiff was exhibiting overall improvement while on
6 medication and participating in therapy, and Plaintiff reported stabilized moods
7 and a lack of anger and suicidal ideation in November 2023. *Id.* However, the
8 ALJ also noted the Appeals Council found Plaintiff sometimes presented with
9 abnormal findings including impaired judgment or insight, psychomotor
10 retardation, speech abnormalities, concentration or attention limitations, poor
11 grooming and hygiene, slowed thinking, suicidal ideation and flat, blunted, or
12 restricted affect. *Id.* at 1744-45.

13 Plaintiff argues this variability over time is not an inconsistency that the ALJ
14 can use in discrediting Plaintiff's testimony because mental health symptoms
15 commonly "wax and wane." *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir.
16 2014). Plaintiff argues the ALJ's citations to the record reveals evidence
17 inapposite to the ALJ's conclusions Plaintiff had unremarkable findings. Plaintiff
18 provides a long list of instances indicating disabling limitations that the ALJ failed
19 to consider. ECF No. 7 at 8-9. However, the ALJ was acknowledging the
20 inconsistency in the records themselves as illustrated by both reported normal and

1 abnormal findings. Additionally, the ALJ noted that “cognitive testing revealed
2 variable findings” and that “[d]ue to the inconsistent findings regarding the
3 claimant’s mental health symptoms and presentation during appointments, it is
4 difficult to assess his mental residual functional capacity based on treating and
5 examination reports alone.” ECF No. 4 at 1745.

6 The ALJ took all of this into consideration in concluding Plaintiff retained
7 the capacity to perform work “as long as he does not have any contact with the
8 public, is not required to work in coordination with co-workers, and has no more
9 than occasional contact with supervisors.” *Id.* at 1745. The ALJ concluded this in
10 part on Plaintiff’s diagnostic testing and presentation but also on Plaintiff’s
11 activities during the period at issue. *Id.* The ALJ lists a myriad of activities
12 Plaintiff reported to engage in including daily exercise by walking, camping,
13 playing volleyball, managing a softball team, hosting church game nights, and
14 overall was juggling multiple events and obligations. *Id.* Plaintiff argues there’s a
15 difference between self-directed activities and workplace activities. Further,
16 Plaintiff contends that many of these activities occurred in 2022 or later and cannot
17 be used as a basis to discount earlier allegations before that time frame. ECF No. 7
18 at 9. However, as previously noted, the ALJ used these activities as evidence in
19 addition to cognitive testing and reports of symptoms and presentation during
20 appointment.

1 The ALJ's finding is supported by substantial evidence. Plaintiff's own
2 interpretation of the record cannot overturn the ALJ's conclusions. "Where
3 evidence is susceptible to more than one rational interpretation, it is the ALJ's
4 conclusion that must be upheld." *Burch*, 400 F.3d at 679 (citation omitted).

5 2. Physical

6 Plaintiff argues the ALJ did not provide sufficient basis to discount
7 Plaintiff's alleged physical limitations. ECF No. 7 at 11. The ALJ noted Plaintiff
8 suffers from carpal tunnel syndrome and degenerative joint disease in his knee and
9 wrist "with symptoms that include wrist pain and dysfunction, knee pain, difficulty
10 standing and walking, and numbness and tingling in his hands and wrists." ECF
11 No. 4 at 1742. The ALJ acknowledged Plaintiff's hernia repair and reported
12 symptoms of abdominal pain and pressure, diarrhea, painful bowel movements and
13 constipation. *Id.* However, the ALJ concluded the reported symptoms were out of
14 proportion to the often mild and unremarkable observations during physical
15 examinations. *Id.*

16 The ALJ adequately cited to objective medical evidence that did not support
17 the level of limitation Plaintiff claimed. The ALJ cited to example records from
18 February 2019 to May 2021 undermining the extent of Plaintiff's reported
19 symptoms. ECF No. 4 at 1742-43. For example, a May 2019 workup revealed
20 only trace joint effusion in Plaintiff's knees. *Id.* A January 2020 physical revealed

1 normal upper extremities with full range of motion and normal strength and
2 sensation. *Id.* Repeated examinations also revealed a soft and nontender abdomen.
3 *Id.* at 1742-43. Additionally, the ALJ noted there was little subsequent evidence of
4 physical issues in recent years. *Id.* at 1743-44. The ALJ concluded that based on
5 these findings, Plaintiff's activities, and his prior work activity at Jewel Apple and
6 Safeway, Plaintiff had the physical capacity to perform work.

7 Plaintiff argues there have also been abnormal findings. Specifically, that
8 Plaintiff had four hernias removed in 2019 and suffered from post-operation
9 complications such as developing atelectasis in the lungs and subsegmental left
10 basilar consolidation. ECF No. 7 at 13. But the four hernias were removed in one
11 operation with the complications arising from that single surgery. ECF No. 4 at
12 562.

13 Plaintiff also argues that the ALJ failed to identify what testimony was
14 contradicted by the listed activities or how they might be transferable to a work
15 setting. ECF No. 7 at 13. An ALJ may make an adverse credibility finding if (1)
16 Plaintiff's activities contradict other testimony, or (2) Plaintiff "is able to spend a
17 substantial part of [her] day engaged in pursuits involving the performance of
18 physical functions that are transferable to a work setting." *Orn v. Astrue*, 495 F.3d
19 625, 639 (9th Cir. 2007) (citation omitted). The ALJ concluded Plaintiff's
20 activities in combination with his prior work activities "demonstrated a physical

1 capacity to perform work at the light exertion level.” ECF No. 4 at 14. The Court
2 finds this explanation a reasonable interpretation of the record and concludes the
3 ALJ’s finding was supported by substantial evidence.

4 **D. Medical Opinion Evidence**

5 Plaintiff contends the ALJ reversibly erred by improperly assessing the
6 medical opinions of E. Billings, Ph.D., K. Islam-Zwart, Ph.D., D. Morgan, Ph.D.,
7 C. Covell, Ph.D., B. Eather, Ph.D., and B. Heath, PA.

8 For claims filed on or after March 27, 2017, new regulations apply that
9 change the framework for how an ALJ must evaluate medical opinion evidence.
10 20 C.F.R. §§ 404.1520c, 416.920c; *see also Revisions to Rules Regarding the*
11 *Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18,
12 2017). The ALJ applied the new regulations because Plaintiff’s claims were filed
13 after March 27, 2017.

14 Under the new regulations, the ALJ will no longer “give any specific
15 evidentiary weight . . . to any medical opinion(s).” *Revisions to Rules*, 2017 WL
16 168819, 82 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider and
17 evaluate the persuasiveness of all medical opinions or prior administrative medical
18 findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b).
19 The factors for evaluating the persuasiveness of medical opinions and prior
20 administrative medical findings include supportability, consistency, relationship

1 with the claimant, specialization, and “other factors that tend to support or
2 contradict a medical opinion or prior administrative medical finding” including but
3 not limited to “evidence showing a medical source has familiarity with the other
4 evidence in the claim or an understanding of our disability program’s policies and
5 evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–(5).

6 The ALJ is required to explain how the most important factors,
7 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),
8 416.920c(b)(2). These factors are explained as follows:

- 9 (1) *Supportability*. The more relevant the objective medical evidence and
10 supporting explanations presented by a medical source are to support his
or her medical opinion(s) or prior administrative medical finding(s), the
11 more persuasive the medical opinions or prior administrative medical
finding(s) will be.
- 12 (2) *Consistency*. The more consistent a medical opinion(s) or prior
13 administrative medical finding(s) is with the evidence from other medical
sources and nonmedical sources in the claim, the more persuasive the
14 medical opinion(s) or prior administrative medical finding(s) will be.

15 20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

16 The ALJ may, but is not required to, explain how “the other most persuasive
17 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§
18 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical opinions
19 or prior administrative findings “about the same issue are both equally well-
20 supported . . . and consistent with the record . . . but are not exactly the same,” the

1 ALJ is required to explain how “the most persuasive factors” were considered. 20
2 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

3 These regulations displace the Ninth Circuit’s standard that require an ALJ
4 to provide “specific and legitimate” reasons for rejecting an examining doctor’s
5 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the
6 ALJ’s decision for discrediting any medical opinion “must simply be supported by
7 substantial evidence.” *Id.*

8 1. E. Billings, Ph.D.

9 Dr. Billings concluded Plaintiff had major depressive disorder, anxiety
10 disorder, methamphetamine substance abuse disorder and alcohol use disorder,
11 both in early remission. She opined Plaintiff would unlikely be able to work for at
12 least six months.

13 The ALJ found this opinion to be somewhat persuasive. ECF No. 4 at 1749.
14 Regarding supportability, the ALJ found the opinion that Plaintiff could not work
15 for six months at that time supported by the circumstances at that time. Plaintiff
16 presented with concentration and attention problems and reported attending
17 outpatient treatment for substance abuse and was homeless. As to consistency, the
18 ALJ found the opinion not inconsistent with Plaintiff’s functioning at that time. *Id.*
19 However, the ALJ concluded the subsequent events of Plaintiff remaining
20 abstinent, obtaining stable housing, and participating in a wide range of activities

1 did not support the opinion beyond the indicated six month period. Thus the ALJ
2 concluded it was not an accurate reflection of Plaintiff's functioning for more than
3 a few months. *Id.*

4 Plaintiff argues that every factor the ALJ mentioned as an improvement took
5 place years after the September 18 onset. However, the relevant time period at
6 issue for Dr. Billings' report was at the time the opinion took place which was May
7 2019. Plaintiff moved into the sober housing in August of 2019 (ECF No. 4 at
8 664), less than six months from the opinion date, and resided there until 2022.
9 ECF No. 7 at 16. The ALJ was reasonable in interpreting this to be stable housing.
10 Additionally, Plaintiff began his sobriety in September 2019, again, less than six
11 months from the report. ECF No. 4 at 664.

12 The Court finds the ALJ provided substantial evidence for finding Dr.
13 Billings' opinion persuasive.

14 2. K. Islam-Zwart, Ph.D.

15 Dr. Islam-Zwart opined Plaintiff, from a functional standpoint, had
16 moderate, marked, and severe limitations as follows:

17 Moderately limited: ability to understand, remember, and persist in
18 tasks by following very short and simple instructions; learn new tasks;
19 perform routine tasks without special supervision; make simple work-
related decisions; be aware of normal hazards and take appropriate
realistic goals and plan independently.
20

1 Markedly limited: understand, remember, and persist in tasks by
2 following detailed instructions; adapt to changes in a routine work
3 setting; communicate and perform effectively in a work setting;
4 maintain appropriate behavior in a work setting; and complete a
5 normal work day and work week without interruptions from
6 psychologically based symptoms.

7 Severely limited: perform activities within a schedule, maintain
8 regular attendance, and be punctual within customary tolerances
9 without special supervision.

10 ECF No. 4 at 1748.

11 The ALJ found Dr. Islam-Zwart's opinion unpersuasive. ECF No. 4 at
12 1748. As to supportability, the ALJ found the opinion was not well supported
13 because the opinion did not explain how the claimant's presentation and mental
14 status examinations would cause the stated work-related limitations and found
15 some of her conclusions at odds with her observations. *Id.* at 1749. As to
16 consistency, the ALJ found the opinion was consistent for Plaintiff's situation at
17 that time in January 2019. Plaintiff was still attending inpatient treatment for his
18 alcohol and substance abuse and couldn't find work. *Id.* However, the ALJ
19 concluded the opinion was not reflective of Plaintiff's ability to work for the entire
20 period at issue since he maintained his abstinence and did find some work after this
opinion. *Id.*

18 The Court finds that the ALJ provided substantial evidence for finding Dr.
19 Islam-Zwart's opinion unpersuasive.

20 //

1 3. Dr. Morgan, Ph.D.

2 Dr. Morgan opined Plaintiff had major depressive disorder that caused no
3 more than moderate limitations with some marked limitations as to:

4 ability to perform activities within a schedule, maintain regular
5 attendance, be punctual within customary tolerances without special
6 supervision, adapt to changes in a routine work setting, and complete
7 a normal work day and work week without interruptions from
8 psychologically based symptoms.

9 ECF No. 4 at 1750.

10 The ALJ found Dr. Morgan's opinion to be somewhat persuasive. The ALJ
11 found Dr. Morgan's conclusion that Plaintiff was no more than moderately limited
12 in the most functional areas supported by his examination findings and consistent
13 with the record as a whole. *Id.* As to Dr. Morgan's opinion that Plaintiff had
14 marked limitations in other areas, the ALJ found these not supported or consistent.
15 As to supportability, the ALJ noted that Dr. Morgan's report presented Plaintiff as
16 with normal speech and affect, and cooperative. "Moreover the claimant's thought
17 process and content were within normal limits, he was fully oriented, and his
18 perception, memory, fund of knowledge, concentration, capacity for abstract
19 though, insight, and judgment were all within normal limits." *Id.* These did not
20 support the reported the marked limitations. As to consistency, the ALJ concluded
the marked limitations were also inconsistent with Plaintiff's ability to engage in a
wide range of activities and maintain employment. *Id.* at 1750-51. Plaintiff argues

1 the ALJ failed to consider other relevant findings in the report supporting marked
2 limitations. ECF No. 7 at 19. While Dr. Morgan's findings might support some of
3 the marked limitations, the ALJ's decision must be upheld “[w]here evidence is
4 susceptible to more than one rational interpretation” *Burch*, 400 F.3d at 679
5 (citation omitted).

6 The Court finds the ALJ provided substantial evidence for finding Dr.
7 Morgan's opinion somewhat persuasive.

8 4. R. Perches, MSW, LSWAIC

9 Dr. Perches completed a check-box form for Plaintiff indicating he was
10 moderately limited in areas including following instructions, interacting with the
11 public, accepting instructions, responding to changes in the work environment, and
12 set realistic goals or make plans independently of others. ECF No. 4 at 1751. She
13 marked other areas as marked limitations including ability to understand and
14 remember detailed instructions, ability to complete a normal work day and work
15 week, and ability to maintain attention and concentration for extended periods. *Id.*
16 She also checked boxes indicating other mild or marked limitations and concluded
17 Plaintiff was receiving treatment but continues to have marginal adjustment. *Id.*

18 The ALJ found Dr. Perches opinion unpersuasive. *Id.* As for supportability,
19 the ALJ found the opinion of marked limitations and marginal adjustment not
20 supported by any explanation. As for consistency, the ALJ found the opinion

1 regarding those areas not consistent with Dr. Perch's own treating notes, the other
2 evidence of record, or with Plaintiff's extensive activities, including work. *Id.*

3 The Court finds that the ALJ provided substantial evidence for finding Dr.
4 Perch's opinion not persuasive.

5. C. Covell, Ph. D. and B. Eather, Ph.D.

6 Dr. Covell opined Plaintiff had moderate limitations related to his disorders
7 and that he could:

8 learn, understand, and recall simple tasks and instructions after a
9 physical demonstration; carry out simple instructions; follow simple
10 work-like procedures; make simple work-related decisions; sustain
attention adequately; maintain a regular schedule; perform tasks that
require little interaction with others; tolerate a work setting where
chances for abrupt changes in routine would be minimal and work
11 goals are routine or set by others.

12 ECF No. 4 at 1750.

13 Dr. Eather reviewed and the evidence and affirmed Dr. Covell's assessment. *Id.*

14 The ALJ found the opinions of Dr. Covell and Dr. Eather persuasive. The
15 ALJ acknowledged that while they did not examine the claimant or review the
16 updated medical records, their opinions were supported by the attached narrative
17 explanations and were generally consistent with the record as a whole. *Id.* The
18 ALJ explains Dr. Covell and Dr. Eather prescribed Plaintiff as generally exhibiting
19 intact cognitive functioning, memory, and concentration and normally does not
20 demonstrate any difficulties that would prevent him from functioning which is

1 consistent with the record.

2 Plaintiff argues that the ALJ failed to adequately articulate the supportability
3 factor with the statement the opinions were “well-supported by their accompanying
4 narrative explanations.” ECF No. 7 at 21. The ALJ only need “set forth the
5 reasoning behind its decisions in a way that allows for meaningful review.”
6 *Brown-Hunter v. Colvin*, 806 F.3d 487, 492. He will not be faulted for explaining
7 a decision with “less than ideal clarity.” *Id.* (quoting *Triechler v. Comm’r of Soc.
8 Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014)). The Court finds the ALJ’s₉
explanation of the supportability factor permitted meaningful review. Therefore,
10 the ALJ provided substantial evidence for finding Dr. Covell and Dr. Eather’s
11 opinions persuasive.

12 Plaintiff next argues that even if found persuasive, the ALJ erred by not
13 including Dr. Covell and Dr. Eather’s limitation to simple tasks with physical
14 demonstrations in the RFC or included in the hypothetical to the VE. EFC No. 7 at
15 21. The Court disagrees. The ALJ interpreted these evaluations related to
16 performing simple tasks that Plaintiff has “an intact capacity to perform *at least*
17 simple tasks and interact with others in a variety of situations.” ECF No. 4 at
18 1750. In reviewing the record, nowhere did Dr. Covell or Dr. Eather state Plaintiff
19 was limited to only simple tasks, rather they state Plaintiff “is able to learn,
20 understand and recall simple tasks/instructions after a physical demonstration.”

1 ECF No. 4 at 193, 226. The ALJ's interpretation to mean at minimum Plaintiff
2 could perform simple tasks was not unreasonable.

3 6. B. Heath, PA

4 Dr. Heath opined that Plaintiff could work on a regular and continuous basis
5 without his physical and mental conditions deteriorating and Plaintiff was unlikely
6 to miss work if working a forty-hour per week schedule. ECF No. 4 at 1751.

7 The ALJ found Dr. Heath's opinion persuasive. The ALJ concluded the
8 opinion was well-supported by the explanation Dr. Heath provided for each finding
9 and it was also consistent with the record that Plaintiff remained abstinent
10 throughout the period at issue, has responded well to medication and therapy, and
11 has engaged in a wide range of activities, including employment. *Id.* at 1752.

12 Plaintiff argues the ALJ failed to adequately explain the supportability and
13 consistency factors. While less than ideal as to clarity, the Court concludes the
14 ALJ's decision was "supported by the inferences reasonably drawn from the
15 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The Court
16 concludes the ALJ provided substantial evidence for finding Dr. Heath's opinion
17 persuasive.

18 //

19 //

20 //

CONCLUSION

Having reviewed the record and findings of the ALJ, the Court concludes that there was no error in the ALJ's decision.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Opening Brief (ECF No. 7) is **DENIED**.
 2. Defendant's Response Brief (ECF No. 15) is **GRANTED**. The final decision of the Commissioner is **AFFIRMED**.

The District Court Executive is hereby directed to file this Order, enter **JUDGMENT**, provide copies to counsel, and **CLOSE** the file.

DATED December 13, 2024.



THOMAS O. RICE
United States District Judge

**ORDER AFFIRMING COMMISSIONER'S DENIAL OF BENEFITS UNDER
TITLES II & XVI OF THE SOCIAL SECURITY ACT~29**